IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WA.No. 2889 of 2007
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AGAINST THE ORDER IN WPC.2871/2007 Dated 30/03/2007
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APPELLANTS/RESPONDENTS IN THE WP:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
FOREST & WILDLIFE DEPARTMENT,
SECRETARIAT,THIRUVANANTHAPURAM

2. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
FOREST HEAD QUARTERS,
VAZHUTHAKKAD,
THIRUVANANTHAPURAM.

3. DIVISIONAL FOREST OFFICER,
NORTH WAYANADU,
MANANTHAWADY.

4. THE FOREST RANGE OFFICER,
MANANTHODI RANGE,
MANANTHODI, WAYANAD.

BY SPECIAL GOVERNMENT PLEADER MR.RANJITH THAMPAN

RESPONDENTS/PETITIONERS IN THE WP:
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1. C.M. RAJAN,
S/O.PERIKKANAYI KUNHICHEKKAN
ADVOCATE,
PERIKKANAYI HOUSE, KOZHIKODE.

2. C.M. KUNHIKANNAN,
S/O. PERIKKANAYI KUNHICHEKKAN,
VELLAMUNDA P.O., WAYANADU.

3. P.M. KAMALA DEVI,
D/O. PERIKKANAYI KUNHICHEKKAN,
PERIKKANAYI HOUSE,
MANDARATHOOR, KURUNTHOTTY,
VADAKARA TALUK, KOZHIKODE.

BY ADV. SRI.P.RAMAKRISHNAN NAIR

THIS WRIT APPEAL HAVING COME UP FOR ORDERS ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**H.L.DATTU, C.J. & K.M.JOSEPH, J.**

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**W.A.No.2889 of 2007 &**
**C.M.Appln.No.1328 of 2007**

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Dated, this the 11th day of December, 2007

**JUDGMENT**

**H.L.Dattu, C.J.**

Delay in filing the writ appeal is condoned.

2. Petitioners who claim that they are in peaceful possession and enjoyment of the lands in Sy.No.415 (R.S.No.574) of Vellamunda Village, North Wayanad Taluk have called in question Exts.P1, P2 and P3 communications received by them from the Divisional Forest Officer, North Wayanad Division. By way of interim prayer, the petitioners have requested this Court to direct respondents 3 to 5 in the writ petition not to interfere with the peaceful possession and enjoyment of the lands in question by them till the disposal of the writ petition.

3. This Court while entertaining the writ petition by its order dated 1st of February, 2007 had granted the interim relief sought for by the petitioners for a period of two months. Further, the Court had observed in its order that pendency of the writ petition will not come in the way of the petitioners in approaching the competent authority, namely the Custodian of Ecologically Fragile Lands and also will not come in the way of the Custodian disposing of the application.

4. By a subsequent order dated 30th March, 2007, the learned Single Judge has only continued the earlier interim order passed by him, namely the order passed on 1st of February, 2007.

5. The second order passed by the learned Single Judge is

continuation of the first interim order. Apart from continuing the interim order until further orders, the learned Single judge has not done anything else in the matter.

6. In our opinion, the appellants are expected to call in question the interim order passed by this Court on 1st of February, 2007 and its continuation by a subsequent order, if they are really aggrieved by the orders passed by the learned Single Judge. Without questioning the first order which has been continued by a subsequent order, in our opinion, the appellants could not have filed this writ appeal. Even otherwise also, the learned Single Judge has only granted some protection to the petitioners till the disposal of their petition before the Custodian, since their main contention before this Court is that their lands are not ecologically fragile lands and therefore, it will not vest with the State Government under the provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003. That issue requires to be decided by the Custodian. In the meanwhile their possession requires to be protected.

7. In fact, in a public interest litigation pending before this Court, we have granted interim orders in favour of the person who is in possession of the property.

8. In our opinion, since the learned Single Judge has only protected possession of the petitioners till the disposal of the writ petition, we do not intend to interfere with the interim order passed by the learned Judge, since the same has been done in aid of the main relief.

9. Accordingly, we pass the following:

**Order**

i) Writ appeal is rejected and while doing so, we confirm the interim order passed by the learned Single Judge.

ii) During the pendency of the writ petition, the petitioners shall not cut or remove trees without the permission of the Court and also alter/change the character of the lands in question and further shall not alienate/transfer the property in their possession to any third party.

Ordered accordingly.

(**H.L.DATTU)**
**CHIEF JUSTICE**

**(K.M.JOSEPH)**
**JUDGE**

vns/DK.